The Solicitors' Journal

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Current Topics.

Solicitors in the Cabinet.

THE LATE Lord BRENTFORD was one of the comparatively few members of the solicitor branch of the profession to attain Cabinet rank. His association with the profession is, of course, known to all our readers, and it is amusingly referred to in an article by Mr. AUGUSTINE BIRRELL, who, like GOLDSMITH, touches nothing that he does not adorn. In his brightly-written paper on "A Church Unchurched," in which he recalls the fight over the new Prayer Book, Mr. BIRRELL mentions the part of protagonist taken by the late Lord BRENTFORD, then Sir WILLIAM JOYNSON-HICKS, against the new edition, and also the vigorous and well-endowed campaign against Anglo-Catholic views prosecuted by him. Mr. BIRRELL then adds: "On his part this was a labour of love, for all the time he was a prosperous and highly honourable solicitor of the High Court who found time not only to attend to the affairs of many private clients, but also to those of that democratic and truly comprehensive institution, the General Omnibus Company, which occasionally found itself in court to meet the charges of running over stray foot-travellers—both Protestant and Papist—in the crowded streets of this great metropolis"! How many other members of what used to be called "the lower branch" have reached the like height in the government of the country? There was Sir HENRY FOWLER, who, later, became Lord WOLVERHAMPTON. He held the office of President of the Local Government Board in Mr. GLADSTONE'S fourth Cabinet, acquitting himself in the post to the admiration of his colleagues as well as of the country. In the present Cabinet we had Sir DONALD MACLEAN, whose sudden death from heart failure is announced as we go to press. He was President of the Board of Education, being the first solicitor to hold that office, and in the short period during which he held that post showed himself to be an able administrator who appreciated the present need for economy without unduly sacrificing the true needs of education. In a list of solicitors who have held Cabinet rank we cannot possibly forget Mr. LLOYD GEORGE. After holding a number of important offices, Mr. LLOYD GEORGE attained the highest position of all, namely, that of Prime Minister, in which exalted position, as well as in the relatively more subordinate ones, even his strongest critics must admit, he made his personality and his influence felt as few others have been able to do.

The T.U.C. and Cheap Litigation.

THE VOICE of the Trades Union Congress has been joined to those demanding the further cheapening of litigation. In the course of an address by a deputation from the General Council of that body to the Lord Chancellor on 7th June reference was made to projected reforms such as the abolition of the "two-thirds rule" and the setting up of one final Court of Appeal, which have already secured some measure of assent from representative bodies. That costs in both county court and high court actions are too high has long been generally accepted, but the slur implied in the deputation's statement that no one seems to be willing to bear the blame, cannot be allowed to go unmet. The independent memorandum issued by the Parliamentary and Commercial Law Committee of the London Chamber of Commerce in April, 1930, is ample testimony to the fact that on the whole barristers and solicitors are not overpaid for the work that they do. Many barristers and solicitors could corroborate this testimony from their own bitter experience, and in many cases, particularly in the county court, attendances are grossly underpaid. A further inaccurate statement by the deputation ought not to be allowed to pass unrefuted. It was said that the Poor Persons' Procedure is little more than a protective covering for the legal profession or an opportunity for the less experienced and busy members of the profession to practise on the poor. The glaring untruth of this gratuitous insult to the legal profession is made obvious from an examination of the figures disclosed in the fifth and sixth annual reports of The Law Society for 1929 and 1930 on Poor Persons' Procedure. During 1929 in London alone poor person litigants recovered £10,300, a sum which was increased in 1930 to £14,500. In 1929 4,904 applications were dealt with throughout the country and in 1930 the figure rose to 5,013. The most eminent firms of solicitors have joined with the humblest in rendering this entirely gratuitous service, and everyone with experience of the courts knows how frequently eminent and experienced barristers appear gratuitously in poor persons' cases. After the recent publication of the New Procedure Rules the Lord Chancellor assured the public that those rules were but a first step towards bringing justice within everybody's reach, and quite apart from the false accusations that the deputation saw fit to make, we cannot help thinking that its statement was not only tardy but superfluous.

The Meaning of "Sickness."

SPECIAL PROVISION is sometimes made in workmen's contracts for the payment of full wages during a limited period of sickness, apart from the ordinary liability under the Workmen's Compensation Act, 1925. A neat point arising out of such a clause came before the Divisional Court on appeal from a county court in *Maloney* v. *St. Helens Industrial Co-operative Society, Ltd.*, on 8th June (*The Times*, 9th June). The provision in question occurred in an agreement between an employers' association and a workmen's union, and was embodied in an oral agreement between the appellant and the respondents. It provided that a total of three weeks' full wages and three weeks' half wages should be payable during periods of sickness. The appellant was injured by an accident arising out of and in the course of his employment, and was unable to work for six weeks. He made no claim under the Workmen's Compensation Act, 1925, but claimed

sickness pay under the wages agreement. The learned county court judge had given judgment in favour of the employers on the ground that the term "sickness" did not include "accident" within the meaning of s. 1 of the Workmen's Compensation Act, 1925. He further held that s. 1 (3), which provides that the Act shall apply notwithstanding any contract to the contrary, did not affect the agreement, as that section extended and did not cut down the rights of the workman. Mr. Justice MACNAGHTEN, in delivering a judgment in which Mr. Justice SWIFT concurred, said that the word "sickness" might properly be used to describe a condition due to accident, and was so used in the phrase "in sickness or in health" in the marriage service. His lordship also held that the clause was not contrary to the Workmen's Compensation Act, as the workman was not thereby prevented from making his claim under the Act, but if he did so the fact that he had been receiving wages since the accident would be taken into account in assessing the compensation. The appeal was therefore allowed. It seems at least arguable that a contract to pay wages during sickness is contrary to the Act, within the meaning of s. 1 (3). if it prevents any effective claim from being made under the Act; and we shall be interested if the case is carried further.

Estoppel by Conduct.

THE PRINCIPLE of estoppel has long played an important part in English law. In "Coke upon Littleton," estoppel is defined thus: "When one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to speak the truth"; and in the comparatively recent case of *Maclaine* v. *Gatty* [1921] 1 A.C. 376, Lord BIRKENHEAD, then Lord Chancellor, said that "the rule of estoppel or bar, as I have always understood it, is capable of extremely simple statement. Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time." The principle is thus quite clear, and is indeed consonant with natural justice, but like other well-established principles it is not always easy of application, although the Court of Appeal in Northern Ireland found little difficulty in applying it to the facts before them in the recent case of *Dunn* v. *Shanks* [1932] N.I. 66, an extremely useful illustration of the practical operation of the principle. There it appeared that for a number of years the plaintiff had sold goods to the defendant who carried on business under the name "T. Shanks & Son." In 1925 the defendant assigned the premises in which he had been carrying on that business to E.S. and G.S. who continued to carry on the same class of business therein. No assignment in writing was made of the business itself or of the debts due to the defendant, and no notice of any change in the business was given to the plaintiff. The defendant continued to come to the place of business and appeared to act as he had done before the transfer. In an action by the plaintiff, who had supplied goods to the business after 1925, to recover the price from the defendant, the jury found that the plaintiff supplied the goods in the belief that there was no change in the business after 1925, that the defendant did not intend the plaintiff so to believe, but that his presence on the premises led him to believe so, that in all the circumstances it was reasonable for the plaintiff so to believe and act; and that there was a real change in the business transferring it from the defendant to E. S. and G.S. in 1925. For the defendant it was strenuously argued that before estoppel can operate the representation relied upon as establishing it must have been made with the intention that it should be acted upon, and that there was a complete absence of such an intention. The court declined to accept this contention. As was pointed out, the defendant had given no notice of the change in the ownership of the business and remained on in the premises working much as before. That amounted to conduct inducing the belief in the mind of the plaintiff that there had been no change, and the jury had found that it was reasonable for the plaintiff so to believe and to act on his belief. The principle of estoppel clearly applied and the defendant was held liable.

Goods Carried in Private Motor Cars.

THE FACT that the Chancellor of the Exchequer has agreed to insert a new clause in the Finance Bill providing that licence duty on private motor cars at the same rate as is payable in respect of commercial cars shall not be levied unless the car in question "satisfies all the conditions which must be satisfied" in a commercial vehicle is intended to remedy the state of affairs disclosed in the recent case of *Payne* v. *Allcott*, in which the Divisional Court (Lord HEWART, L.C.J., and AVORY, J., MACNAUGHTEN, J., dissenting) took the view that any motor car which is in fact used for the conveyance of goods comes within the class or description of vehicle to which the higher rate of duty is applicable. The new clause, in point of fact, requires a car to be altered and adapted so as to make it suitable for the conveyance of goods before it can be treated as a commercial vehicle. We confess some doubt as to whether the problem will be solved even now, because there are so many ways in which alterations and adaptations can be carried out without, in fact, depriving the car of its primary use as a private car for the conveyance of passengers and not goods. However, the intention of the Legislature to remedy the anomaly is now made clear, and it is to be hoped that the ultimate wording of the Finance Bill will avoid the necessity for any further interpretations by the court.

The Use of Steel Traps.

THE OBSERVATIONS made by HORRIDGE, J., at Berkshire Assizes when dealing with the case of *R.* v. *Carpenter* to the effect that he (the learned judge), having been twenty-one years on the Bench, thought he had dealt with every form of criminal case, but that Berkshire had found one with which he had never had to deal before, were doubtless intended to express his lordship's view that the prosecution was misdirected. According to *The Times* the jury returned a verdict of "Not guilty," after an intimation from the judge that the defendant's explanation that he had set the trap to catch badgers might be accepted. The trap had in fact caught a dog; but the indictment charged the accused with having set a steel trap "calculated to inflict grievous bodily harm upon a trespasser or other person coming in contact therewith." The grand jury apparently rejected another count charging the accused with having set the trap with *intent* to cause grievous bodily harm. Presumably the prosecution was under the Offences against the Person Act, 1861, s. 31, which provides that whosoever shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanour, and being convicted thereof shall be liable . . . to be kept in penal servitude . . ." and any person knowingly and wilfully permitting any of these things which may have been set in any place afterwards coming into his possession or occupation to continue there is to be deemed to have placed it there himself with the same intent. The section does not apply, however, to the setting of traps for vermin. Nor does it apply to setting or placing or causing to be set or placed such engines in a dwelling-house for the protection thereof. The Statute has no relation to the setting of steel traps or other devices for catching animals against which there are other statutory prohibitions. It is only directed against causing injury to mankind. It was held in *R.* v. *Heaton*, 60 J.P. 508, and has been so held in other cases that if death results from the setting of a spring-gun or other engine illegally, it will render the responsible person guilty of manslaughter.

Criminal Law and Practice.

THE HABITUAL OFFENDER.

RADICAL alterations of the law are recommended in the unanimous report of the Departmental Committee on Persistent Offenders under the chairmanship of Sir John C. Dove-Wilson, K.C., issued on 3rd June (Cmd. 4090, H.M. Stationery Office). The present method of treatment of habitual criminals under s. 10 of the Prevention of Crimes Act, 1908, is condemned, and instead of permitting the court to pass a sentence of additional preventive detention only where at the same time it passes a sentence of penal servitude for a crime, two new kinds of detention sentence are proposed, which may be passed in lieu of, but not in addition to, a sentence of penal servitude or imprisonment.

The shorter sentence, for not less than two years and not more than four years, may be awarded where an offender is convicted of an offence punishable by imprisonment for two years or by penal servitude, and it appears to the court on a report from the prison authorities on the offender's mental and physical condition, his history and his circumstances, that by reason of his criminal habits or tendencies his detention is expedient for the prevention of crime. A sentence of prolonged detention is recommended for an offender who has been convicted of a crime and has since attaining the age of sixteen years at least three previous convictions of crime, where the court is of opinion that his criminal habits and mode of life are such that his detention for a prolonged period of years is expedient for the protection of the public. "Crime" for the purpose of the proposed provision as to prolonged detention is defined to cover the more serious offences against property and against the person, including certain sexual offences. It is suggested that discretionary powers of awarding these sentences should be conferred on Courts of Assize and Quarter Sessions in England and the High Court of Justiciary and the Sheriffs' Courts in Scotland. The objects of the new method are stated by the committee to be to provide (*a*) positive and progressive training, particularly for offenders between the years of twenty-one and thirty, and (*b*) custody under conditions which will fit offenders to take up life on release under normal social conditions. Various establishments should be provided for different types of offenders and the experiment of "labour camps" and "minimum security structures" should be tried in selected cases, and in all cases full use should be made of adult educational classes and the correlation of class work with industrial occupations. A medical psychologist should be attached to one or more penal establishments to carry out psychological treatment in selected cases. It is further recommended that the legal distinction between penal servitude and imprisonment should be abolished so that the penal servitude convict should, like the offender sentenced to imprisonment, be able to earn absolute remission, and the system of release on license should be abolished. Much of the mischief of the present treatment of crime lies in the fact that sentences are too short to act as a deterrent, nearly 80 per cent. being for periods of not exceeding three months. The result is that the number of previous sentences increases the probability of relapse and a large part of the prison population consists of a "stage army" of individuals who pass through its portals again and again. In 1930, of 39,000 sentences of imprisonment passed, 28,000 were imposed on persons who had previously been found guilty of offences. The report illustrates the new outlook on crime, which, without being unduly sentimental, regards prevention as being of greater importance than mere punishment. Men, as Charles Dickens observed, are largely creatures of habit, and if from whatever cause they fall into bad or criminal habits, they should be encouraged to resume good ones, and not be for ever afterwards branded as enemies of society.

Police Evidence in Running-Down Cases.

EVERY now and then it is a pleasure to read of some really sensible point having been mentioned and discussed in our legislative assembly. Too often are valuable suggestions evaded there when made, and later left to sink back into the obscurity whence they have emerged. Such a point was brought forward quite recently, to meet, alas! with the usual fate. We trust that the evasion is but a temporary one.

During the debate on the Home Office Vote, the question was raised as to whether the present system, or, rather, the lack of it, among the various police authorities with regard to the furnishing of police evidence in civil actions should not be revised without delay. The practice throughout the country, as every solicitor knows, is far from uniform, and is the cause, not infrequently, of great injustice to poor litigants, as well as embarrassment and inconvenience to those who overlook the principles which in law should be observed.

Take the example, unfortunately too common, of a running-down case. Long before the trial, one party or both, knowing that a policeman was on the scene of the collision either at the time when it occurred, or shortly afterwards, approaches the local police authority, the superintendent of the division or the chief constable, maybe, for a copy of the report made by the policeman concerned.

The report, which everyone knows has been made, may or may not be produced, according to the regulations in force in the particular police district, or it may be furnished on payment of a fee which may vary, again according to the local regulations.

Now it is patent that the report may be of the utmost use to one or other or both of the parties involved in the collision. It may indicate enough to show one of them that he cannot fight a case if one is brought against him. It may tell him just the opposite, as well as providing him with the names of witnesses whose presence he himself had never noticed at the time the accident happened. It should at least inform him of what an independent person, the policeman, saw of the *locus in quo*, the marks on the road, "the pools of blood," and the condition and position of the vehicles or of the individuals concerned and so forth, at or near the time of the accident.

There is no reason we know of either in law or commonsense why such reports made by police officers to their superiors should not be available on demand for parties to a collision or for their proper representatives. A reasonable fee, of course, should be paid for the information, sufficient to cover the cost of producing the document. Regulations by the Home Office should be made without delay, providing that no police authority anywhere in its jurisdiction shall in future refuse to accede to the request for the production of such a report when made by a person concerned or acting for one concerned in the occurrence which gave rise to the report.

That is, however, although important, not the most serious aspect of the questions regarding police evidence in this connexion, which arise in too many parts of England and Wales (and, we believe, that Scotland also can furnish instances of what we complain). Having perhaps obtained the report to which we have referred, it may be desirable to call the policeman who has made it to give evidence at the trial. He must, of course, be subpœnaed. No one, as a rule, we would hope, takes this course with a possible witness without having some idea of what he is able truthfully to say for the side for which he is to go into the witness box.

Astonishing as it may appear, it is, however, the practice with some police authorities to require a fee to be paid before a police officer may be interviewed for the purpose of ascertaining what he knows of the matter in question, and in some instances the fee is graduated according to the rank or grade of the officer from whom the information is desired, so

that one litigant may be so unfortunate as to have had his accident witnessed by sergeants at 7s. 6d. a time, whereas another may escape with ordinary policemen at 5s. or less. Moreover, if the officer is required to visit the litigant or his representative his expenses must be paid, and as the conversation can only take place in the presence of a superintendent of police, another fee must be paid to enable that functionary to attend. Even this is not all in some police areas. There a further fee is charged for any information furnished by the police relating to the names of any witnesses and to statements which may have been made by them.

Thus, after a collision has occurred, injuring, say, a pedestrian the latter may be faced with this situation. He was so injured, or dazed perhaps, that he remembers little or nothing of what happened. He may have been attended by police, who were present at the time of the occurrence, or who came soon afterwards. Before he can approach any of them or learn of what took place he must be prepared to pay fees and make arrangements which not only may be a serious burden to him, if he be a poor man, but which indeed may prevent his having justice at all.

There can be little doubt in anyone's mind that there should be no restriction whatever placed upon the giving of evidence in any case. So far as members of the police force are concerned, they are in no different position from that of the ordinary citizen, and it is the duty, well acknowledged, of every citizen, when properly summoned to do so, to give evidence of facts of which he has knowledge, and it is his duty to give it without any fee or reward. Indeed, if he were to ask for money he would be suspect as a witness. Of course, if he is a working man who has lost any time by having to go to the court, then he is entitled to be indemnified for the time he has lost and to have his expenses paid. There is no reason why similar principles should not apply to police witnesses. The fees which are in many cases charged by the police authorities do not, of course, go to the individual policemen concerned. The system would perhaps be less illogical if they did. But the practice cannot but induce a lower conception of the duty to give evidence, which, as we have said above, is common to all of us.

The defence of the authorities is a simple one. They say that they are compelled to call for some payment because of the great loss of police time which occurs by reason of the applications for interviews in order to get the proofs of individual policemen. In the Metropolitan district alone, it is said, the interviews number about four thousand in a year, and that if the policeman is interviewed off duty and a fee is charged, it is so charged where the man receives payment from the police authority in respect of the duty which he has to perform in his own time. Further, it is said, that unless a fee is charged there would be no end to the fishing interviews that policemen would be called on to give either to persons who were thinking of bringing a possible case, or to persons who might be interested in the matter in one way or another without litigation being involved. It is also said that in many cases where there is any danger of hardship, or there is any indication that the person concerned cannot afford the fee, the instruction is that the fee shall be waived.

No doubt there is a good deal to be said for the point of view of the authorities, and it is clear that some sort of control must be maintained over the situation. But it is far more important, in our view, that the principle that everyone must aid justice should be upheld than that the police forces should be conducted with the minimum of interference and of encroachment upon the time of its members. Not only must the course of justice be pure, but it must appear to be so, and the charging of fees for information concerning the names of witnesses and so on, must, as we have said, tend to lower the standards of those whose evidence must be so paid for.

Further, the fact that the system is not a uniform one is another blot. One hears that in Kent, between Dover and Folkestone, a matter of a few miles, there are two entirely difference practices, and one needs little imagination to see how embarrassing and difficult the lack of uniformity may make the position of a party or his solicitor in seeking the truth and in preparing a case, more especially if they be strangers to the district.

Road accidents do not seem to decrease. The more they occur, the greater the hardship will be as the result of these restrictions. While, as we have indicated, there would appear to be no reason why in most cases a small fee should not be charged for the copy of the report, we strongly urge the Secretary of State for Home Affairs to make the practice the same throughout the country and to induce the Central Conference of Chief Constables to alter its view with regard to the charging of the fee for the evidence of members of the police forces. No time should be lost in making the change.

[NOTE.—It is interesting to observe that since the above article was written the Home Secretary has indicated that a revised procedure has been issued by the Commissioner of Police of the Metropolis, and from his answer to a question in the House of Commons on this subject (see *Hansard*, 9th June, p. 2095), the inference is to be drawn that this revised procedure will be universal in the country.—ED., *Sol. J.*]

Costs of Commercial Arbitrations.

A FEW points in connexion with the costs of commercial arbitrations by consent may be of interest.

In order to determine the principle on which these costs should be taxed, it is necessary to trace the effect of the arbitration award itself. Section 2 of the Arbitration Act, 1889, provides that "a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to the Act, so far as they are applicable to the reference under the submission." Clause (i) of the First Schedule provides that "the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax and settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client."

If then the submission is silent on the point, the arbitrator may give such directions as he thinks fit as to the payment of costs, and may even fix the amount thereof himself. On the other hand, he may direct that the costs shall be taxed, and in this case the costs may be taxed by a Taxing Master of the Supreme Court Taxing Office in the same way as the costs of an ordinary High Court action, since by s. 1 of the Act "a submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or judge, and shall have the same effect in all respects as if it had been made an Order of the Court."

Since the award is to have, by reason of the latter section, the same effect as if it were an order of the court, and the taxation is dealt with on this principle, it follows that the Rules of the Supreme Court with regard to the taxation of costs will apply, and the ordinary scales of allowances, suitably adapted, will be applied by the taxing master.

The costs referred to here fall into two classes, namely, costs of the reference and costs of the award. The costs of the reference include all the costs of the parties incidental to the presentation of the matter to the arbitrator, whilst the costs of the award are the costs and charges of the arbitrator which he demands as a condition of issuing his award. It was decided in the case of *In re Walker & Brown*, 51 L.J., Q.B. 424,

that where the terms of the reference gave the arbitrator power to deal with the costs of the reference it also included a power to deal with the costs of the award. This would follow as a natural consequence since the passing of the Arbitration Act, having regard to s. 2 and cl. (i) of the First Schedule quoted above.

The costs of the reference include all the necessary expenses incidental to the preparation of the parties' cases, including payments to witnesses, and all the charges incurred in obtaining the documents and evidence, and the presentation of the case to the arbitrator. They include also the costs of lodging and arguing a special case stated under s. 19 of the Act: see *In re Knight and Tabernacle, etc., Building Society* [1892] 2 Q.B. 613. Further, it was decided in the last-mentioned case that where the arbitrator had discretion to award costs, the court had no power itself to give directions as to payment of the costs when delivering its opinion on the case stated.

Where the arbitrator fixes the amount of his remuneration and states it in the award then no question of taxing such fees can arise, for they form part of the award. On the other hand, it would be open to the party liable to pay the fees to apply to have the award set aside on the ground of misconduct if he considered the fees of the arbitrator to be excessive (*In re Prebble and Robinson* [1892] 2 Q.B. 602).

An important point to observe is that where the arbitrator has discretion to deal with the costs, either by direct authority in the submission or by virtue of cl. (i) of the First Schedule of the Act, he may himself assess the amount of the solicitor's costs to be paid to one of the parties by the other, and may state such amount in the award. If this is done it is then binding on the parties and, subject to an application to have the award set aside on the ground of misconduct, no objection can be raised. The effect of this where a lay arbitrator is appointed may be serious for a successful party.

Further Observations on the effect of Section 20 of the Finance Act, 1922.

[CONTRIBUTED.]

THE article which appeared in the issue of the 28th May, entitled "Some practical observations on the effect of Section 20 of the Finance Act, 1922," has, it is pleasing to see, attracted an unusual number of interesting inquiries.

It so happens that since the article was written the case of *Watson's Trustees* v. *Wiggins*, before ROWLATT, J., has been reported (48 T.L.R. 307). In that case the covenant by the father was to pay to the settlement trustees "during the joint lives" of himself and his son, then a minor, an annuity of £350 per annum to be held by the trustees upon trusts in the usual form for the maintenance, education and benefit of the minor. The settlement contained a power for the settlor with the consent of any one of several persons (including the trustees) to revoke the trusts and to appoint new or other trusts, powers and provisions in lieu thereof. It was decided by Mr. Justice ROWLATT that the income was the income of the infant and not of the settlor.

Now, if that decision stands unreversed, it is agreed that it clearly covers a case in which, to use the phrase of the former article, there is a "mixture" of the two periods; and to that extent the second paragraph on p. 368 will require some modification. It is understood, however, that an appeal is pending from the decision of Mr. Justice ROWLATT.

If the case before Mr. Justice ROWLATT is rightly reported it seems that the point as to the mixture of the two periods was never taken. For the arguments of the Crown, as set out in its contentions, were confined to the effect of the power of revocation. It was contended that the existence of the power of revocation prevented the period from complying with either sub-s. (1) (*c*) (i.e., the "not less than the life of the child" period) or with proviso (1) (i.e., the "whole life of the person by whom the disposition was made" period). Mr. Justice ROWLATT held that that was not so. But the point made in the article was a different one. The Act, by sub-s. (1) (*c*), says that, if the period of payment or application is "for some period less than the life of the child," then the income is to be the income of the disponor. If that stood alone it is obvious that no lesser period of covenant would suffice than the whole life of the child. There is then introduced a proviso (proviso (1)), which says that sub-s. (1) (*c*) is not to apply to a case where the income is payable to or applicable for the benefit of the child "during the whole period of the life of the person by whom the disposition was made." It is noticeable that this proviso is a proviso operating by way of exception to sub-s. (1) (*c*). There are, therefore, two questions to be asked: first, is the particular covenant within sub-s. (1) (*c*), i.e., for a period of less than the life of the child? If the answer to that is "yes," then the second question remains whether the covenant is "for the whole life" of the parent. The two questions have to be asked consecutively and independently. What the Act does not exempt is income covenanted to be paid or applied "during the whole life of the child or during the whole of the life of the parent"—as one correspondent puts it. That appears to be a wholly different thing.

It is difficult, therefore, to see that a covenant to pay or apply income "during the joint lives" of parent and child or for some other indefinite period either escapes sub-s. (1) (*c*) as being for a period "not less than the life" of the child (as it obviously may be) or is saved by the proviso as being for the whole period of the life of the parent, for which period it certainly may not endure. In short, it is submitted that the two periods must be ascertained disjunctively.

As has been said, it is understood that *Watson's Trustees* v. *Wiggins* is to go to the Court of Appeal. As it stands, it is not clear that the point dealt with in the previous article has yet been taken. In the meantime the above views are, of course, expressed with deference to the judgment of ROWLATT, J., and to any ultimate decision by the Court of Appeal.

Connivance by a Limited Company.

UNDER the Sale of Foods (Weights and Measures) Act, 1926, s. 5 (1), a person shall not sell any butchers' meat otherwise than by net weight. "A person" includes a limited company. It is also clear that to constitute this offence *mens rea* is not required. Hence, for any offence under this section, both the actual offender and the company are liable.

But s. 12 (5) exempts "the employer or principal" from a penalty (though not from a conviction) in certain cases. By this sub-section the employer is entitled (on giving a specified notice) to have the actual offender brought before the Court and convicted, if, after the offence has been proved, the employer proves that he had used due diligence, and that the offence was committed "without his consent connivance or wilful default."

What is the meaning of "connivance" in this connexion? Moreover, what does the term mean as applied to a limited company?

The term "connivance" goes beyond negligence; it imports a certain criminality. It is chiefly used in relation to matrimonial offences and is defined by "Stroud's Judicial Dictionary" (Vol. I, p. 74) as the "willing consent to a conjugal offence . . . or a culpable acquiescence in a course of conduct reasonably likely to lead to the offence being committed." In other words, it is positive consent or culpable acquiescence.

See also "Stone's Justices' Manual," 1931, p. 818; "Brown and Latey: Divorce Practice" (1931), 11th ed., pp. 67, 72; *Dotzauer* v. *Dotzauer* (1925), 41 T.L.R. 289.

The leading case is *Gipps* v. *Gipps*, 11 H.L.C. 1. It was there held that connivance means not merely to refuse to

see an act of adultery, but also wilfully abstaining from taking any steps to prevent it, which, from what passes before the husband's eyes, he must reasonably expect will occur.

See also *Clayton* v. *Clayton* [1932] P. 45: "Connivance involves corrupt intention, and evidence merely of imprudence or inattention will not do . . . I pass to determine whether he knowingly entered into an arrangement for a breach of the marriage laws . . . (Connivance) does involve what in its essence is a wrongful intention contrary to the law of the land," *per* Lord MERRIVALE, P. pp. 50, 51.

Connivance, therefore, by a limited company should mean a deliberate encouragement of an offence. If an errand boy sold butchers' meat without stating the net weight, that would not be by the connivance of *the company*. If a shop manager failed to take due precautions, is that the "connivance" of the company? If the company appoints a superintendent to see that the law is obeyed and through the shop manager's negligence it is not obeyed, can that properly be described as "connivance" by the company? First, there must be a definite encouragement. Secondly, that encouragement must surely be by a person who is in a position of authority with regard to the particular act.

Two recent cases follow dealing with the liability of employers under the Sale of Food Act.

In *Walkling Ltd.* v. *Robinson* (1930), 28 L.G.R. 88, Walkling Ltd. (bakers) were convicted of selling bread which did not weigh one pound. They brought before the court a person whom they said was the actual offender, but he was acquitted. They had employed inspectors to superintend the observance of the statutory regulations. One such inspector (who was in charge of thirty shops) visited the branch in question once weekly. The actual offender was a baker's roundsman. The manager had been instructed by the managing director to test the weight of the loaves every morning, but on the particular morning he had failed to do so.

In *Hammett* v. *Crabb* (1931), 29 L.G.R. 515, it was held that the question whether the employer had exercised due diligence was a question of fact. If the employer had exercised that diligence and the other person is the actual offender, the employer will be convicted but exempt from penalty. In this case, Hammett Limited carried on business as butchers at 200 shops in London. Their Lambeth manager was aware of the regulations, and knew that he was committing an offence. District superintendents were employed to supervise the observance of the statutory regulations. One such superintendent visited the shop twice or three times a week. The justices held that the company had not exercised due diligence and were guilty of wilful default. A Divisional Court held that there was no evidence on which they could do so.

In an unreported case, *Farrell* v. *British & Argentine Meat Co. Ltd*, 19th November, 1931, the Sutton Petty Sessions held (on facts similar) that where a roundsman sold meat otherwise than by net weight and the company and its manager had taken the usual precautions, the company was liable and had through its manager connived at the offence. The appeal to the Kingston Quarter Sessions was dismissed.

It is respectfully submitted that on the authority of *Hammett* v. *Crabb*, the quarter sessions were wrong. If the precautions taken in *Hammett* v. *Crabb* constituted no evidence of lack of due diligence, *a fortiori* there was no evidence of "connivance." For connivance connotes more than a mere failure to take care; it must import some sort of acquiescence, or recklessness.

Moreover, it is submitted that *primâ facie*, in *this* breach of the law, the company could only connive through its superintendent, and not through its manager. This presumption could be rebutted, e.g., by proving that the manager had countermanded the superintendent's orders.

Company Law and Practice.

CXXXIV.

APPLICATIONS TO COURT IN A VOLUNTARY WINDING UP.

LAST week I had occasion to refer to s. 252 of the Companies Act, 1929, and the present seems to be a favourable occasion for making further reference to it. Before going to the actual section itself, it is necessary to refer to s. 246, which says that the provisions contained in the nine sections of the Act next following shall apply to every voluntary winding up, whether a members' or a creditors' winding up. It does not require too prodigious an effort in mental arithmetic to decide that, as a result of that section, s. 252 is one which applies to every voluntary winding up.

Having arrived at this conclusion, let us see what the section says. These are its words:—

> Section 252.—(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
>
> (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

The practical effect of this section is to put a voluntary winding up, for many purposes, on the same footing as a winding up by the court, with the added advantage that the intervention of the court cannot take place until the court has been asked to intervene; so that matters can take their course in the ordinary way of a voluntary liquidation until some real necessity for assistance or guidance arises, when it can be obtained.

As a general rule applications under this section are made by the liquidator, being usually cases where the liquidator desires guidance, protection, or assistance from the court, but it will be seen that the section also gives contributories and creditors liberty to apply, and these latter can avail themselves of the section when the liquidator does something in connexion with the winding up of which they do not approve. The original section, 138 of the Companies Act, 1862, did not include the creditors of the Company as possible applicants, and they had no locus to apply, either under the Act or otherwise, to the court in a voluntary winding up: see per MALINS, V.-C., in *Needham* v. *Rivers Protection & Manure Co.*, 1 Ch. D. 253, at p. 254. This was frequently found, in practice, to be a drawback, and accordingly, after a decent interval, the Companies Act, 1900, provided that the application might also be made by a creditor of the company. On any application under the section by a person resident abroad, he may be required, under the ordinary practice of the court, to give security for costs: *Re Pretoria Pietersburg Railway Co.* (*No.* 2), [1904] 2 Ch. 359. The application is made by summons.

Before the court can assist the applicant on a summons of this nature, it must be satisfied that the relief to be granted will be "just and beneficial." For guidance on the question as to what is "just and beneficial" we may turn first of all to the judgment of FRY, J., as he then was, in *Re Gold Company*, 12 Ch. D. 77. In that case a contributory applied under s. 138 of the Companies Act, 1862, asking, shortly, that the court might exercise the power given to it under s. 115 of the Companies Act, 1862 (now represented by s. 214 of the Act of 1929)—that is, the power to summon before the court any officer of the company, or any person supposed to be capable of giving information concerning the transactions and the trade, dealings, affairs, or property of the company.

It is necessary, for this purpose, to go to some extent into the facts of the case, which were as follows.

The company was incorporated in November, 1873, with a capital of £100,000 divided into shares of £1 each. The articles of association contained an article in an unusual form, to the effect that, if at any time it appeared to the directors that the capital for the time being subscribed was sufficient for the company's purposes, the directors might allot any shares then unallotted to the then shareholders in proportion to the number of shares respectively held by them, which shares might be so allotted as fully or partially paid up, although no moneys might be received by the company in respect of such shares from any allottee thereof.

Shortly after the registration of the company, namely on the 31st December, 1873, an agreement (which was duly registered on the 7th January, 1874) was entered into between the company of the first part, the persons named in the first schedule of the second part, and the persons named in the second schedule (who were by the agreement recited to be the only existing shareholders) of the third part. The second schedule, which purported to set out the existing shareholders, contained twenty-one names, such persons being the holders of 2,375 shares, while in the first schedule were thirty-two names. The agreement recited that the parties of the second part had advanced to, or for the benefit of, the company the sums of money set against their respective names in the first schedule (which totalled £18,775), and that all the said moneys had been properly expended upon the property or otherwise for the legitimate purposes of the company, and that the parties of the second part had respectively agreed to accept as fully paid-up shares the shares set against their names in the same schedule (which were 18,775) in lieu of any claims they might respectively have in respect of the said moneys, and, following these recitals, the operative part of the agreement provided that, in consideration of the advances and expenditure, the shares mentioned in the first schedule should be allotted to the persons against whose names they were respectively set, credited as fully paid up. Presumably the existing shareholders were parties to this agreement because of the article above referred to, but, as this was merely permissive, it is difficult to see the necessity or desirability of such a course.

The applicant in the proceedings bought shares in the company in the open market in June, 1875, and on the 9th May, 1877, a resolution for voluntary winding up was passed by the company, the former secretary of the company being appointed liquidator. The report does not deal at any length with the evidence adduced on the application, but the judgment of FRY, J., goes to this, that where there is a *primâ facie* case made out for an inquiry, then the court ought to order that inquiry as being just and beneficial. Thus the learned judge says, at p. 79: "There has been brought to my attention the agreement of the 31st December, 1873, under which certain shares are allotted upon the footing of a recital that moneys amounting to £18,775 had been properly expended upon the property or otherwise for the legitimate purposes of the company. There is before me in the affidavits, in the articles of association of the company, and in the books of the company, evidence about which I desire to say as little as possible; but I only say it satisfies me that there is a question that I think ought fairly and reasonably to be inquired into with regard to the truth of that recital in the instrument, and with regard to the propriety of the allotment of shares made on the footing of that recital."

But it must be shown that the exercise of the power will be just and beneficial, and a stand was early taken against the view that the order should be made more or less as a matter of course. Thus, in *Re Metropolitan Bank, Heiron's Case*, 15 Ch. D. 139, an attempt was made to make use of the two sections which were used in combination in the previous case to which I have referred, the *Gold Company Case*, to obtain material from a director of a bank useful to the liquidator in an action which he had brought on behalf of the company against that director. The action, which was an action for damages for fraudulent representations, was commenced by the liquidator in June, 1879, statement of claim and defence delivered, interrogatories put to the defendant and answered, an application for further and better answers dismissed by the judge, and the action was set down for trial on 28th February, 1880. On the 19th April the liquidator took out a summons under s. 138, for the exercise of the powers under s. 115 against the defendant, namely, an order for the attendance of the defendant in chambers for examination. This application was, of course, not an application in the action, but in the winding up. Vice-Chancellor BACON is reported to have considered that the liquidator was entitled as of right to examine the defendant, and made an order accordingly, but the Court of Appeal took the opposite view. It appeared that there was no evidence as to possibility of the exercise of the power being just or beneficial, and the liquidator admitted that he wished to ascertain whether it was prudent for him to continue his action. JAMES, L.J., held that the liquidator's application under the Act was vexatious, and the Court of Appeal was unanimous in saying that the liquidator was not entitled to the order as of right.

(To be continued.)

A Conveyancer's Diary.

Mortgages Repayable by Instalments—Statutory Powers.

It seems a somewhat curious thing that until last year there does not appear to have been any case decided upon the point whether, where a mortgage debt is payable by instalments, the statutory powers conferred on mortgagees by the C.A., 1881, and now by the L.P.A., 1925, arise when any instalment has become due, or only when the whole mortgage debt has become due.

The question was before the court in *Payne* v. *Cardiff District Council* [1932] 1 K.B. 241.

The facts in that case, shortly, were that certain street works were carried out by a local authority under the Private Street Works Act, 1892, and a final apportionment, as provided by that Act, was made under which the plaintiff was shown as chargeable with a certain sum in respect of premises of which he was the lessee. An order was also made under s. 257 of the Public Health Act, 1875, whereby the sum so apportioned was payable by annual instalments which became a charge upon the premises.

Three instalments, with interest thereon, being in arrear, police court proceedings were taken and a distress levied which proved abortive.

The local authority then offered the property for sale by auction, and the plaintiff brought an action in the County Court for an injunction, which was granted by the County Court judge. It is the appeal to the Divisional Court (Lord Hanworth, M.R., and Lawrence, L.J., sitting as additional judges of the King's Bench Division) to which I am now drawing attention.

The local authority relied on s. 13 of the Private Street Works Act, 1892, which enacts:—

> "Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under s. 257 of the Public Health Act, 1875), with the sum finally apportioned on them, or if objection has been made against the final apportionment, with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum,

and the urban authority shall, for recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver."

That, of course, brought in the L.P.A., s. 101 (1) :—

"A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers to the like extent as if they had been in terms conferred by the mortgage deed but not further (namely) :—

"(i) A power when the mortgage money has become due to sell or to concur with any other person in selling the mortgaged property . . ."

The real question turned upon the expression "when the mortgage money has become due." For the plaintiff it was contended that "mortgage money" here means the whole mortgage debt and not a part only.

It is, as I have said, strange that such a point should not long ago have been the subject of a judicial decision. There are, however, some *dicta* in *Tottenham Local Board of Health* v. *Rowell* (1880), 15 Ch.D. 378. In that case James, L.J. (in dealing with a charge under the Local Government Act, 1858, where the local authority had resolved to accept payment by instalments) said : "The only effect according to my view of that" (i.e. of accepting payment by instalments) "would be, that the charge could not be enforceable as long as the annual instalments were paid, but could only be enforceable after the instalments had fallen into arrear"; and Brett, L.J., said : "Where the payment has come to be a payment by instalments, then I think that if the charge is to be made effective it could only be made effective for instalments in arrear. So that if the sum had been made payable by instalments in fifteen years and the payments were in arrear for seven years, then if the charge were attempted to be put in force, it could only at the end of those seven years be put into force for the seven years' instalments in arrear."

Although negative in form those expressions of opinion certainly imply that the charge could be enforced in respect of arrears of instalments, and, read with the context, mean that it could be enforced in the Chancery Division in the same way as any other charge, and both the Master of the Rolls and Lawrence, L.J., cited those expressions with approval in that sense.

In the result it was held that the power of sale had arisen for the purpose of recovering so much of the mortgage debt as had become due (i.e., the instalments in arrear), with interest, and as there was two months' interest in arrear on such instalments, or one or more of them, the power was not prevented from being exercised by s. 103 (1) (ii) of the L.P.A., 1925.

There is one other point of practical interest in the case. After the local authority had advertised the property for sale the plaintiff made a tender of the instalments in arrear with interest thereon, but he did not tender anything for the costs of preparing for the auction.

Lawrence, L.J., said that in these circumstances the tender was insufficient and the defendants were entitled to proceed with the sale.

Of course, in the case of a mortgage, the form commonly adopted is one in which the mortgagor covenants for payment of the whole of the mortgage debt in the usual way with a proviso to the effect that if the mortgagor shall pay the mortgage debt by certain instalments with interest on the principal sum for the time being remaining unpaid, and shall pay each of such instalments on the day appointed for payment thereof, or within so many days thereafter, with interest in the meantime, and there shall have been no breach of any covenant on the part of the mortgagor other than that for payment of principal and interest, then the mortgagee will accept payment in that manner.

In such cases the question decided in *Payne* v. *Cardiff District Council* does not arise.

But all mortgages are not in that form, nor in the alternative form of making the mortgagor covenant to pay by instalments, with a proviso that the whole mortgage debt shall immediately become due upon default in punctual payment of any instalment.

The point is not, perhaps, of much importance to mortgagees so far as regards the statutory power of sale, as a mortgagee will not often wish to sell for the purpose of raising the overdue instalments, although he might do so where the property is not a sufficient security for more, or he might want to sell a part.

The decision is, however, important with regard to the statutory power of appointing a receiver.

A Strange Case—and a Caution.

I had a strange state of things under my notice recently from which a moral may be drawn, although the facts are not likely to be found once in a thousand or more times in examining a title.

In April of last year a purchaser contracted to purchase from a tenant for life. For some reason there appears to have been great delay in completing and in fact completion did not take place until the end of March of this year. The purchaser shortly after completion agreed to sell a part of the property, and on examining the title it appeared from the conveyance to the purchaser that A and B were the trustees of the settlement, and the purchase money was expressed to have been paid to them.

The abstract delivered to the new purchaser disclosed that there was an indorsement on the vesting deed showing that A had died in November last, and a new trustee had been appointed in his place. On inquiry it was found that there was a deed of declaration as required by the S.L.A., 1925, s. 35 (1).

It appears that what had happened was that the conveyance had been executed by the then trustees in anticipation of completion taking place, at or about the time fixed, and when completion did in fact take place the appointment of new trustees was overlooked with the result that the conveyance was void under S.L.A., 1925, s. 18 (1) (*b*).

Such an extraordinary occurrence is not to be expected, but I think that it does point to the necessity of examining the vesting deed on completion to see whether any indorsements have, by chance, been made upon it since it was examined with the abstract. If that had been done in the case I have mentioned the mistake would have been discovered.

I think that the same applies to probates, which should always be looked at on completion for any indorsements which were not there when the deeds were examined in the course of investigating the title.

I suppose that most solicitors do that, but it is a precaution that may sometimes be omitted.

I may mention here, by the way, with regard to what may be called rather too perfunctory completions, that I remember being concerned in a matter years ago where a fraud was discovered by a solicitor scrutinising the memorandum of registration in Middlesex, endorsed on each of the deeds offered to him on completion, although of course he had done that when he examined the deeds with the abstract.

The King has appointed Mr. EWEN MACPHERSON, barrister-at-law, one of the Charity Commissioners, to be Chief Charity Commissioner in the room of Mr. George Williamson Wallace, C.B., resigned; Mr. HENRY DASHWOOD STUCLEY LEAKE, barrister-at-law, Secretary to the Charity Commissioners, to be a Commissioner to fill the vacancy so caused; and Mr. JAMES ELWIN COKAYNE ADAMS, barrister-at-law, to be Secretary to the Charity Commissioners.

Landlord and Tenant Notebook.

Tenant or Lodger.

Judging by the reported cases, the question whether the occupier of rooms which are part of a house is a tenant or a lodger has rarely led to litigation between the occupier and the person who let him into occupation. It is true that important questions might well arise, in theory; e.g., as to the right to distrain and the right to assign; but, in practice, the contract is usually easily determined, and no doubt differences are settled accordingly. When a question as to tenancy or licence between parties themselves has arisen, it has usually related to mining interests, factories "let" with power, and the like. On the other hand, the occupier of rooms has frequently based claims or defences against third parties on an allegation that he was a tenant, and questions of status have accordingly been discussed in a variety of cases, including franchise cases, rating cases, actions for trespass; and the rights of him who let the occupier into occupation have depended on the answer to the question in actions for breaches of the covenant against alienation.

The difference is generally described by reference to the expression "exclusive"; if exclusive occupation is granted, the grantee has an estate; if not, a licence. Whether this really defines the essential distinction is perhaps arguable. Analysis suggests that the difference is one of degree rather than of kind. And, as Jessel, M.R., said in *Bradley* v. *Baylis* (1881), 8 Q.B.D. 195, C.A., at p. 219, some of the cases are quite irreconcilable. I propose, however, to take a few cases of different kinds and to examine the factors on which the decisions are based.

In *Monks* v. *Dykes* (1839), 4 M. & W. 567, the defendant to an action for assault and battery relied in part upon a defence that he was in possession of a dwelling-house. The plaintiff proved that the dwelling-house was a room in a house belonging to one Mrs. Phillips, who resided there and kept the key of the outer door. Abinger, C.B., said: "a room within a dwelling-house may be a dwelling-house, or it may not; here it was not."

Three franchise cases may usefully be quoted. In *Toms* v. *Luckett* (1847), 5 C.B. 23, the claimant had the whole of the first floor, which was over a shop and parlour occupied but not slept in by his landlord; other tenants had other rooms or sets of rooms and each had a key of the front door. Maule, J., did not consider possession of the key conclusive, but he expressed the principle as follows: "Where the owner takes in a person to reside in a part of it, though such person has exclusive possession of the rooms appropriated to him . . ., yet, if the owner retains his character of master of the house . . . the individual . . . occupies as a lodger only and not as a tenant within the meaning of s. 27 (of 2 Will. IV, c. 45, the Reform Act)." In *Smith* v. *Lancaster* (1869), 18 W.R. 170, a test case brought by a barrister, tenant of a set in King's Bench Walk, who had let two rooms to other barristers, and was alleged to be no longer the tenant occupying the set, another factor was introduced; apart from the question that the agreement provided for services and of the clerk and laundress, and supply of coals, attention was paid to the matter of purpose; if the "sub-tenants" had wanted to use their rooms as show-rooms, they could have been prevented. The most recent registration case is *Kent* v. *Fittall*, [1906] 1 K.B. 60, C.A., in which the question was really the difference between a "lodger" and "inhabitant occupier" in the 1867 Act, the principle applied being again that of control of the occupation.

Among the numerous rating cases, perhaps the most helpful is *Mutual Tontine Westminster Chambers Association Ltd.* v. *Assessment Commissioners of St. George's Union* (1872), 25 L.T. 696, which concerned the rateability of what are now called "service flats." Cockburn, C.J., said: "The question in these cases is always whether the occupier has a distinct and separate habitation, or is a mere inmate with the landlord . . . The landlord has no right to enter the premises which are occupied by the tenant."

The status of resident members of a ladies' club was examined in *Keith* v. *Twentieth Century Club Ltd.* [1904] 73 L.J. Ch. 545, the question being whether they were entitled to the benefit of a covenant permitting freeholders, tenants and sub-lessee of premises adjoining a London square, to use its garden. By the rules of the club, country members were entitled to bedrooms, which had to be taken by the week. On the other hand, they were bound by numerous restrictions when in residence. Buckley, J., summed up the position by saying that the object appeared to be to provide "a home with as little trouble as possible to the inmates"; but as the club servants would have a right to enter the rooms, and there was no express provision giving the right to a particular room, he held that there was no tenancy.

In *Municipal Freehold Land Co.* v. *Metropolitan & District Rly. Joint Committee* (1883), Cab. & El. 184, the right to the exclusive use of a board room in another company's offices once or twice a week was held not to confer a right of compensation as tenants for compulsory taking of land.

As between the parties to the agreement themselves, only two cases appear to deal with "rooms." In *Wright* v. *Stavert* (1860), 2 El. & El. 721, the plaintiff had advertised her boarding-house, quoting £115 per annum for board and lodging. By a verbal agreement the defendant had agreed to take accommodation for himself, his servant and his horse at £200 per annum (to include board), but cancelled the agreement just before it was to have begun to run. The arrangement had been for a quarter's notice on either side. The plaintiff sued for £50, and the defence raised was that there was no writing to satisfy the Statute of Frauds. The finding was that the defendant was merely to have become an inmate of the establishment, not a tenant, the case being distinguished from *Inman* v. *Stamp* (1815), 1 Stark. 12, in which the agreement to take apartments or lodgings at a yearly rent was held to require writing or part performance as concerning an interest in land. The facts are very sketchily reported.

The covenant against alienation is nowadays usually so phrased as to cover parting with even "occupancy," but under an older form a dispute as to whether the grant of the right to use the refreshment rooms in a theatre was finally settled in favour of the covenantor in the House of Lords in *Edwardes* v. *Barrington* (1901), 85 L.T. 650. The covenant, and the agreement, were said by Lord Halsbury, L.C., to present "a beautiful confusion of thought and language."

The factors considered in the cases I have cited are: possession of key of outer door; residence on premises of landlord; restriction of purpose; rendering of services; right of entry. None of these is ever in itself decisive of the question of exclusive occupation; but what I suggest is that the extent to which it is exclusive is the true criterion, and this is perhaps hinted at in the passage from Maule, J.'s, judgment which I have cited. After all, a lodger has a right to lock the bath-room door.

NEW PROCEDURE RULES.

During the hearing of New Procedure summonses before Mr. Justice Swift and Mr. Justice Macnaghten on Wednesday last, Mr. Justice Swift made the following statement:—

"When a plaintiff thinks that there is no defence to his claim and that he is entitled to summary judgment under Order XIV, the better course is that he should not mark his writ 'New Procedure,' but should proceed in the ordinary way under Order XIV, and apply for summary judgment. If he is right he will then obtain summary judgment in the ordinary way; if he turns out to be wrong the Master will in a suitable case transfer the action to the New Procedure list."

Wednesday, 22nd June, is the date fixed by their lordships for the hearing of the first four cases under the New Procedure.

Our County Court Letter.

THE AGRICULTURAL HOLDINGS ACT, 1923.

THE question of a purchaser's liability for compensation before completion was considered in the recent case of *Saunders* v. *Long and Model Farm and Frowd's Dairies (Bournemouth) Limited*, at Wimborne County Court, in which the applicant and the first respondent were respectively tenant and landlord under a lease from Lady Day, 1929. Within twelve months, however, the tenant received notice to quit from the secretary of the above company (the second respondent) to which (as stated in a covering letter) the landlord had transferred all his interests, as shown by the fact that he had signed the covering letter as managing director. The subsequent receipts for rent were given by the company, which also levied a distress and entered into a further agreement extending the tenancy to Michaelmas, 1931, without prejudice to any claim for compensation. By an agreement of even date with (and annexed to) the lease, and made between the tenant and the company (but signed on its behalf by the landlord) it was agreed that the tenant should sell all his milk to the company, and a clause in the lease stated that the rent was fixed on this basis. Liability for compensation (on termination of the tenancy) was disputed on the grounds that (1) there had been no completion of the sale and purchase to the company, and, as the notice to quit was, therefore, not given by the landlord (as defined by the above Act) it was invalid, (2) the tenant had not quitted in consequence of such notice, in accordance with s. 12, and (3) even if the notice was valid, the rent was divisible as between the farm and the milk contract. The tenant contended that (*a*) the original landlord had ratified the company's notice to quit, and they were both estopped from denying its validity, (*b*) the tenant's payments were not divisible, as they had always been treated as rent—even to being the subject of a distraint. Upon a case stated, His Honour Judge Hyslop Maxwell held that (1) in spite of the non-completion, the company was the landlord (having received rent as such) and the notice to quit was therefore valid, (2) the company had extended the tenancy without prejudice to any claim for compensation. In the result the plaintiff's rent was not divisible, and he was entitled to compensation—not from the original landlord, but from the company, which was ordered to pay costs on Scale B.

It is to be noted that the above proviso in the lease did not constitute a contracting out of s. 33, so as to disentitle the tenant to compensation in respect of the milk business, under the principle of *In re Lancaster and Macnamara* [1918] 2 K.B. 472. The first-named case, *supra*, was also distinguished on the facts from *Richard* v. *Pryse* [1927] 2 K.B. 76, in which the deputy county court judge at Aberystwyth had held that the purchaser became the landlord as from the date fixed for completion—even though the actual date was postponed. This decision was reversed in the Court of Appeal, where Lord Justice Bankes held that, under the conditions of sale, the vendor remained the "person entitled to receive the rents and profits" under s. 12, until the actual completion. Lord Justice Scrutton and the present Lord Atkin agreed that the vendor was therefore liable for compensation under the above Act, but the questions were left open as to the liability of, e.g., a *cestui que* trust or an equitable mortgagee.

THE NURSING OF SICK BOARDERS.

THE advent of the holiday season lends interest to the recent case of *Meeres* v. *Otter* at Spilsby County Court, in which the claim was for £8 5s. 2d. for services rendered. The defendant had been taken ill when lodging with the plaintiff, by whom she had been nursed for over six weeks, the plaintiff's case being that she had been promised payment for the services rendered, which included the hire of a car and a lost letting of two rooms. The contention for the defence was that, if a lady let lodgings, illness was one of the incidents of the occupation, for which no extra charge could be made. His Honour Judge Langman observed that, if such were the case, the result would be to entitle the landlady to turn out of doors any lodger who became ill. Judgment was given for £7 14s. 8d. and costs. It is to be noted that, although there is an implied warranty that lodgings are fit for occupation —as laid down in *Wilson* v. *Finch-Hatton* (1877), 2 Ex. D. 336—there is no implied reciprocal contract that the lodger is a fit occupant. This was decided by the Court of Appeal in *Humphreys* v. *Miller* [1917] 2 K.B. 122 (although the tenant there died from leprosy), but was doubted by Mr. Justice McCardie in *Collins* v. *Hopkins* [1923] 2 K.B. 617.

Obituary.

SIR DONALD MACLEAN, M.P.

Sir Donald Maclean, M.P., President of the Board of Education, died suddenly on Wednesday, the 15th June, at his home in London, at the age of sixty-eight. He had suffered from heart trouble for some time past.

Donald Maclean was born in 1864, the eldest son of Mr. John Maclean, of Kilmoluag, Tiree. Admitted a solicitor in 1887, he practised in London and Cardiff, and was a member of the Faculty of Procurators in Glasgow. In 1900 he unsuccessfully contested Bath as a Liberal, but won a remarkable victory there in 1906. He was again defeated at Bath in January, 1910, but secured a seat for Peebles and Selkirk in the following December. In 1911 he was appointed Deputy Chairman of Ways and Means, the first solicitor to occupy that responsible post. In 1916 he was sworn of the Privy Council, and was made Chairman of the Treasury Committee on Enemy Debts, and of the London Military Appeal Tribunal. He was created K.B.E. in 1917, and in that year was Chairman of the Reconstruction Committee on the Poor Law. He led the Independent Liberals from 1918 until he lost his seat in 1922. After being unsuccessful at Kilmarnock in 1923 and at East Cardiff in 1924, he was elected for North Cornwall in 1929, and again at the General Election last year, when he took office as President of the Board of Education, with a seat in the Cabinet. In 1924 he was appointed Chairman of the Committee on the Registration of Dock Labour, and in 1926 of the Inter-Departmental Committee on the Effect of Social Insurance on Migration. He was President of the National Liberal Federation from 1922 to 1925. In 1920 he received the honorary degree of LL.D. at Cambridge. He was a founder of the National Society for the Prevention of Cruelty to Children, and in recent years served as the Society's National Solicitor.

MR. W. A. ATTENBOROUGH.

Mr. Walter Annis Attenborough, barrister-at-law, died at Bedford on Monday, the 13th June, at the age of eighty-one. The son of Mr. Robert Attenborough, of London, he was educated at St. Paul's School and Trinity College, Cambridge, where he graduated M.A. and LL.M. He was called to the Bar by the Middle Temple in 1874 and joined the Midland Circuit. From January to November, 1910, he was Conservative Member for Bedford, and from 1921 to 1925 he was Deputy and Assistant Recorder of Birmingham.

COL. C. J. HUSKINSON, O.B.E.

Colonel C. J. Huskinson, solicitor, of Newark, died on board ship on Sunday, the 5th June, when returning from a business trip to South Africa. He was admitted a solicitor in 1888, and was a partner in the firm of Messrs. Larken & Co., of Newark and Lincoln.

MR. N. H. AARON.

Mr. Norman Hyam Aaron, solicitor, of Fore-street, E.C., died near Great Bookham, Surrey, on Thursday, the 9th June, at the age of fifty-five. He was admitted a solicitor in 1901.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Lord Trevor, who died on the 19th June, 1730, was the first Chief Justice of the Common Pleas to be given a peerage during his period of office. The honour had not, however, any relation to his judicial merits, for he was one of a batch of twelve new peers which the ministry of the day "procured to be created (in such haste that few, if any, of their patents had any preamble or reasons for their creation) only to support the Peace of Utrecht, which the House of Lords, they found, would not pass without that addition." There was some controversy at the time as to whether a peerage was not incompatible with the judicial office. In politics, he was eminently inconsistent. Beginning his career as a Whig, he became a Tory under Anne, but in 1726, some years after he left the Bench, he returned to his old friends, who received him with open arms and made him first Lord Privy Seal and later, a few weeks before his death, President of the Council. Speaker Onslow says of him that "he liked being at Court and was much there after he had these offices, but was very awkward in it by having been the most reserved, grave and austere judge I ever saw in Westminster Hall."

THE DANGERS OF CHARITY.

The remarks of Mr. Justice Roche at the Norwich Assizes, when he pointed out that under the Poor Persons Act petitioners for divorce and others accept the charity, not of the State, but of the Bar, may remind people that fees are not the lawyer's sole preoccupation. But charity has its dangers, as Lord Russell of Killowen, C.J., once discovered while he was at the zenith of his career at the Bar. At the time that he was a Member of Parliament, a poor woman of his constituency wrote to him to say that having been deserted by her husband, she wanted a divorce and would Sir Charles please forward it to her in the course of the next few days in the enclosed stamped envelope? As a result, she obtained an interview with the great man who finally provided counsel and solicitor for her case, bearing the cost himself. Then came the thunderbolt. Quite another version of this simple transaction reached the husband's ears with the result that one day a horrified registrar found himself faced with an application in chambers to join Sir Charles Russell as co-respondent. Elucidation of the situation by the petitioner's solicitor cleared the matter up and, to the immense relief of the registrar, the application failed.

A SCOTS DISTINCTION.

In the King's Bench Division recently a witness on being asked by Sir William Jowitt, K.C., whether he was a Scotchman replied, "Oh no, I am not, I am a Scotsman. There is a vast difference." Thereupon, Sir William suggested that he was the better of the two and the witness agreed. One gathers that he would have endorsed the sentiment of the parting criticism once levelled by Lord Justice Mathew at a witness who had incurred his displeasure. "You are a Scotchman," he said, "in the worst sense of that opprobrious term."

THE DEVIL TURNS UP.

It must be by a special dispensation of Providence that ecclesiastical litigation often has the indirect result of fortifying a belief in the Devil. During the Norwich Consistory Court case, the Bishop's leading counsel stated that he had received a letter from a woman calling him "the Evil One," and that one of the rector's counsel had also received a letter from the same woman calling him the same thing. Similarly, during the hearing of a case brought by a churchwarden against his rector who had refused him Holy Communion on the ground that he did not believe in a personal devil, Lord Chancellor Westbury remarked that, "the poor churchwarden who did not at one time believe in the personality of the Devil seems to have returned to the true orthodox faith when he received his attorney's bill." It was Lord Westbury, by the way, who "abolished Hell with costs."

Reviews.

The Local Government of the United Kingdom (and the Irish Free State). Seventh Edition. 1932. By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn and the Northern Circuit, Barrister-at-Law. Crown 8vo. pp. xv and (with Index) 825. London: Sir Isaac Pitman & Sons, Ltd. 12s. 6d. net.

The production of a student's text-book which also serves as a work of occasional reference is no slight achievement. This is such a book, and we note its re-appearance with pleasure. It is the standard text-book for the examinations of the Institute of Municipal Treasurers and Accountants, the National Association of Local Government Officers, the Poor Law Examinations Board, the Surveyors' Institution, the Incorporated Association of Rating and Valuation Officers and other bodies, and it fulfils its purpose admirably. It presents a survey of the whole field of local government, as well as an accurate account of the quick-changing kaleidoscope of local government legislation during recent years. The historical notes with which each chapter is prefixed are particularly valuable for the purpose of assisting the student in securing the right point of view. Perhaps too much space is occasionally allotted to the findings of the various Departmental Committees and Royal Commissions whose reports so frequently precede changes in local government law, but such matters cannot be entirely omitted from an account showing the direction and tendencies of modern local government law. The reader will also find a clear and well tabulated statement of all the important recent legislation, such as the Rating and Valuation Act, 1925, the Housing Acts, 1925-30, the Local Government Act, 1929, the Road Traffic Act, 1930, etc. Fortunately for the student the output of local government legislation shows some little sign of abatement, and all interested, whether in the study or practice of local government, will be glad of what the President of the National Association of Local Government Officers in a Foreword calls a breathing space to assimilate the new law, and possibly time for the preparation of a consolidating Bill. In the meantime, however, we still have with us this excellent work.

A Pleasant Hour in the Temple. By W. MARSHALL FREEMAN, of the Middle Temple, Barrister-at-Law. 1932. Demy 8vo. pp. 18. London: Mitchell, Hughes & Clarke. 1s. net.

This little volume is intended to supply a long-felt want to visitors to the Temple. There is, of course, nothing original in it, as most of what it contains has already been stated elsewhere in one or other of the vast library of books that have been written about the Temple and the Inns of Court generally. It makes, however, a brief explanatory guide-book which will enable visitors to find in a short time what is best worth seeing in that ancient abode of quietude and learning, and should prove very useful.

Books Received.

The Concise Guide to the Elements of Commercial Law. By W. LIONEL COX, F.Com.Sc.A., A.C.I. First Edition. 1932. Crown 8vo. pp. 88. London: Lincoln Williams, The Temple Bar Publishing Company, Ltd. 2s. 6d. net.

A Digest of the Questions set at Bar Examinations during the past Six Years. Classified and arranged by MARSTON GARSIA, B.A., of Merton College, Oxford, the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. Third Edition. 1932. Demy 8vo. pp. x and 121. London: Sweet & Maxwell, Ltd. 6s. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Liability for Injury to Scholar.

Q. 2495. A is a child of ten years of age. She is a pupil at a local elementary school, and on account of her having previously suffered from a chill was allowed by the teacher during recreation time to stay in a classroom while the other children were out at play. It appears that some of the teachers during recreation time stay in the school and another teacher goes out into the playground. The child in question was passing through a doorway in the school corridor carrying some books to the head teacher, and in consequence of two boys, who ought to have been out at recreation, but who were on the other side of the door, slamming the door, the child sustained an injury to the little finger of her right hand, which has since necessitated the little finger being amputated down to the first joint. The local education authority deny liability. It appears that the authority would be responsible if the child sustained injury through defect in the buildings or some positive act on the part of a teacher in putting the child in some proximity of danger, but I cannot find any case which would fix them with responsibility for acts of omission or rendering them liable for any injury children may sustain while at school, and presumably in their custody.

A. The question of the head teacher's liability does not appear to have been considered, but she was apparently negligent in sending A for books during the recreation period, and would therefore be liable (see *Smith* v. *Martin and Kingston-upon-Hull Corporation* [1911] 2 K.B. 775). The local authority's liability depends upon (*a*) whether the head teacher was liable, as in the above-named case; (*b*) whether any other teacher was responsible for the two boys (who did the damage) being inside the building during the recreation period. Even if the head teacher was not responsible, the local authority appear to be liable, as another of their employees was apparently negligent in allowing the two boys to have an opportunity of slamming the door. The latter may have been unsuitable, as in *Morris* v. *Carnarvon County Council* [1910] 1 K.B. 840, and further evidence should be obtained on this point.

Devolution of Statutory Tenancy.

Q. 2496. On the 8th November, 1912, A granted to B a tenancy of certain premises for a period of two years. B remained in possession under the agreement until his death on the 25th June, 1927, and was, therefore, at his death a statutory tenant of the premises pursuant to the provisions of the Rent Restrictions Act. B died intestate, leaving a widow, who was residing with him at the time of his death, and consequently she became entitled to the benefit of the statutory tenancy pursuant to s. 12 (*g*) of the Act of 1920. The widow continued to reside upon the premises and died on the 2nd February of this year. At the time of her death a daughter was residing with her. Does the statutory tenancy of the widow devolve to the daughter, or did the statutory tenancy of the widow determine at her death? If the latter be the fact, it is presumed that the daughter can be considered a trespasser and that possession of the premises can be obtained, in which event it is presumed that the proceedings for possession would have to be taken against the daughter, who will also be liable to pay a sum for use and occupation of the premises from the date of her mother's death to the date when possession be obtained.

A. The statutory tenancy terminated with the death of the widow: *Pain* v. *Cobb*, 47 T.L.R. The daughter is a trespasser and should be treated as such.

Incidence of *Ad valorem* Duty.

Q. 2497. A wishes to turn his business into a private limited company, and with a view to saving the somewhat heavy *ad valorem* duty on a contract for sale it is proposed that he should pay for his shares in cash such a sum as will be sufficient to enable the Company to pay the existing debts of the business. As nothing would be paid for goodwill and stock and plant would pass by delivery and the shares would be paid for in cash, the only necessity for any contract would be that the company should pay the debts and if the vendor is content not to put this in writing it would seem that the *ad valorem* duty on a sale contract would be saved, as s. 42 (2) of the Companies Act, 1929, only seems to apply where the consideration for the sale is the issue of fully paid shares. Is the proposed arrangement in any way illegal or improper?

A. The proposed arrangement is not illegal or improper in the sense that it avoids the necessity for filing particulars of the contract under the Companies Act, 1929, s. 42 (2). The latter section, however, does not impose *ad valorem* duty, which will still be exigible under the Stamp Act, 1891, s. 57. A better course will therefore be for A to pay the existing debts of the business, and to except from the sale book debts or other realisable assets, subject to a proviso that these shall be used to pay the debts.

Appointment of Permanent Director.

Q. 2498. A private company was registered incorporating Table A with variations. These variations included the appointment of AB and CD as permanent directors and the subsequent provisions of the articles relate solely to these two persons. It is now desired to appoint a third permanent director. Can this be done at a general meeting of the company or is a special resolution necessary amending the articles of association?

A. The two existing permanent directors apparently have no objection to the appointment of a third, and this can be done at a general meeting of the company. A special resolution to amend the articles would only be necessary if the articles stipulate that there shall be only two permanent directors. It does not appear that the articles contain any such condition, either express or implied, and the appointment of a third permanent director will be binding, if made at a general meeting. See *In re Oxted Motor Company Limited* [1921] 3 K.B. 32, and *Parker and Cooper Limited* v. *Reading* [1926] 1 Ch. 975. It will be advisable to specify whether the third permanent director is to be subject to the same provisions in the articles as the two original permanent directors, and the conditions of his engagement should be set out in a service agreement between him and the company. Any appointment of a "permanent" director is subject to the company's statutory power of altering its articles, and an action for breach of contract will not necessarily be successful if the company dismisses a "permanent" director. See *Shuttleworth* v. *Cox Brothers and Company (Maidenhead) Limited* [1927] 2 K.B. 9.

Notes of Cases.

High Court—Chancery Division.

Stillwell *v.* Windsor Corporation.

Clauson, J. 13th May.

LOCAL GOVERNMENT—HIGHWAY—TREES IN STREETS—DANGER AND OBSTRUCTION TO PUBLIC—POWER TO REMOVE TREES—PUBLIC HEALTH ACT, 1875, s. 149.

The plaintiff brought this action to restrain the defendants from removing certain trees standing in a road which bounded the plaintiff's land. In April, 1931, the defendants served the plaintiff with notice requiring her to remove the trees as being a danger and obstruction to the public. The plaintiff having failed to comply with the notice, they cut down and removed the trees or some of them, whereupon the plaintiff issued the writ in this action and obtained an interim injunction against the defendants, the motion being subsequently renewed and by consent was treated as the trial of the action. Evidence was given at the trial which proved to the satisfaction of the court that the trees were more than 100 years old, that some of them were so diseased and decayed as to be a source of danger to the public using the road, and further that they caused obstruction to vehicular traffic. It was argued on behalf of the plaintiff that the trees did not vest in the defendants under s. 149 of the Public Health Act, 1875, and that the streets only vested in the urban authority *qua* streets. The case of *Coverdale* v. *Charlton* (1878), 4 Q.B.D. 104, was referred to.

CLAUSON, J., in delivering judgment, said it must be assumed that the trees were planted in the roads either by the highway authority with the consent of the owner of the soil or by the latter with the privity of the highway authority, since they were standing on roads over which the public had rights of user. But even if the plaintiff had a right of property in the trees, still the defendants would be justified in removing them, indeed it would become their duty to do so. The effect of s. 149 was to vest the roads in question in the defendants for the purposes of the section, with the result that the plaintiff had no property in or control over the trees at all. Having regard to the decision in *Coverdale* v. *Charlton* (*supra*), that an urban authority has under that section a certain right of property in the herbage growing in streets, it was difficult to decide otherwise than that the defendants had a similar right in the trees in question. The action would be dismissed, but without costs.

COUNSEL: *G. R. Upjohn; Charles Harman.*

SOLICITORS: *Mills & Morley; Sharpe, Pritchard & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

McCall Brothers, Limited. *v.* Hargreaves.

Goddard, J. 11th May.

BILL OF EXCHANGE—ORDER OF INDORSEMENT—NO NEGOTIATION—ALLEGED AGREEMENT TO GUARANTEE—STATUTE OF FRAUDS RELIED ON.

In this action McCall Brothers, Limited, claimed from J. Hargreaves £600 alleged to be payable on two bills of exchange for that amount drawn by the plaintiffs on the 19th February, 1931, payable on the 10th August, 1931, to their order, accepted by Wain, Shiell and Co., Limited, and indorsed by the defendant. The plaintiffs said that the indorsement was made in pursuance of an agreement whereby the plaintiffs agreed to sell goods to the acceptors in consideration of the indorsement. The defendant admitted that he had agreed to write his name on the back of the bills, but said that he did not do so as indorser, that he received no consideration for so doing, and that he did not enter into the alleged agreement. Alternatively, he said that if any such agreement existed, it amounted to a guarantee and was not in writing, and he relied on the Statute of Frauds.

GODDARD, J., said that the defendant's first point was that the bills were indorsed by the plaintiffs after they had been indorsed by the defendant and in the wrong order. The defendant admitted that that would be no answer if the bills had been negotiated, but contended that as there had been no negotiation the plaintiffs could not recover. He relied on *Shaw* v. *Holland* [1913] 2 K.B. 15. That contention, however, was disposed of by the decision of the House of Lords in *Gerald McDonald and Co.* v. *Nash and Co.* [1924] A.C. 625; 68 SOL. J. 594, and of Wright, J., in *National Sales Corporation Ltd.* v. *Bernardi* [1931] 2 K.B. 188, and that first point therefore failed. Dealing with the defence of the Statute of Frauds, his lordship referred to a number of authorities, and said that it would astonish most people to be told that the Statute of Frauds could ever be set up as an answer to a claim under a bill, and he was glad to find that there was nothing in the authorities which obliged him so to hold. The bills must be regarded as indorsed by the plaintiffs to the defendant, and re-indorsed by him to them: see *Glenie* v. *Bruce Smith* [1908] 1 K.B. 263. He thought, therefore, that the true effect was that the defendant had undertaken all the liabilities of an indorser and had agreed not to have recourse against the drawer, who was also the holder. Judgment for the plaintiffs.

COUNSEL: *Cartwright Sharp* for the plaintiffs; *Gerald Gardiner* for the defendant.

SOLICITORS: *Robins, Hay & Waters; Keen, Rogers & Co.* for *Reginald Hartley*, Royston.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Watkins *v.* Reddy. Bateson, J. 11th May.

PROBATE—TRIAL AT ASSIZES—RIGHT TO JURY—MATTER OF DISCRETION—R.S.C. ORDER XXXVI, rr. 1–6; COURT OF PROBATE ACT, 1857 (20 & 21 Vict., c. 77), ss. 35, 38; STATUTE LAW REVISION ACT, 1892 (55 & 56 Vict., c. 19), s. 1, proviso.

Summons adjourned into court.

This was an application to discharge an order made by the judge in chambers reversing an order of the registrar directing that this probate action for trial at Bristol Assizes should be tried by a special jury. On the pleadings, the applicant, who was one of the defendants, raised issues of want of due execution and of knowledge and approval and of the righteousness of the transaction. The plaintiff and another defendant desired trial before a judge alone. There were a number of wills mentioned in the pleadings.

Counsel for the applicant submitted that no probate suit involving issues of fact could be tried at Assizes, except by a jury, notwithstanding a direction issued by the senior registrar on 8th December, 1927, viz.: "*Probate actions at Assizes: Juries.*—In view of the repeal of s. 38 of the Court of Probate Act, 1857, by the Statute Law Revision Act, 1892, the case of *Bushell* v. *Blenkhorn* (1866), L.R. 1 P. & D. 89, need no longer be followed. An order may be made by a registrar for the hearing of a probate action at Assizes without a jury." In *Bushell* v. *Blenkhorn*, Sir J. Wilde (as he then was) decided that he had no power to order an issue to be tried at Assizes without a jury, holding himself bound by ss. 35 and 38 of the Court of Probate Act, 1857. Those sections had been repealed by the Statute Law Revision Act, 1892, which, however, kept in being the established jurisdiction prior to the Judicature Act, 1875. The combined effect of the saving of the "established jurisdiction" and Ord. XXVI, rr. 4 and 6, was to make a jury a matter of right and not of discretion in the trial of a probate action at Assizes.

BATESON, J., in giving judgment, said that he had not to decide the question of jurisdiction before the Act of 1892, raised by counsel, because it was quite obvious that now by R.S.C. Ord. XXXVI, there was jurisdiction either enlarged

or substituted for the old jurisdiction. Under r. 1 of that Order on a summons for directions the order made shall direct the mode of trial. Under r. 2, unless r. 6 apply, there is to be no jury, although the judge has power to order one. Rule 6 says, in effect, that there is to be a jury, except in cases where rr. 3 to 5 apply. Rule 3 relates to Chancery cases—Rule 4 to cases which before November, 1875, could, without consent, be tried without a jury, and r. 5 to prolonged examination of documents and scientific examinations. The present was a case which could have been tried without a jury before November, 1875, at any rate in London, and there were no excepting words in r. 4, such as "at assizes" or "provided the case is to be tried in London." The rule meant that if it was a case which could have been tried without a jury the court could say that it might be tried by a judge alone. If nowadays a probate case could not be sent to Assizes to be tried in what was the best way it would be a very great pity. It was certainly a better way of ensuring justice than under the restriction for which counsel argued.

COUNSEL: *Clifford Mortimer* and *William Latey*, for the applicant; *F. L. C. Hodson*, for the plaintiff; *H. B. D. Grazebrook*, for the other defendant.

SOLICITORS: *Arthur Taylor & Co.*, for *Titley, Long & Vale*, Bath; *Hancock & Willis*, for *Barry & Harris*, Bristol; *Calder Woods & Sandiford*, for *Wansbroughs & Co.*, Bristol.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.

Correspondence.

Some Practical Observations on the Effect of Section 20 of the Finance Act, 1922.

Sir,—In the very interesting article on s. 20 of the Finance Act, 1922, which appears in your issue of the 28th May last, your contributor apparently says or infers:—

(1) That a covenant to endure for the whole life of the parent, if the child shall so long live, is not a covenant which will endure during the "whole life of the person by whom the disposition was made," within the meaning of the section, "because the child may die first." Surely this cannot be the meaning of the section, as it would be impossible to pay any sum to a child, or apply any sum for a child's benefit, after the child was dead. Conveyancing counsel advised me some time ago on the point as follows: "I agree with the suggestion put to me in conference that the whole life of the settlor must be taken to mean, the whole life of the settlor so long as the child is living." It seems to me that the covenant is one which would, on the death of the child, become impossible to perform.

(2) That it is not, or may not be, possible to insert a forfeiture clause on bankruptcy, etc., in the case of a covenant for a payment during the whole life of the donor, as it would be if the covenant was to make the payment during the whole life of the child. Assume that the opinion given to me by counsel is correct, why should not the covenant be to make the payment during the joint lives of the parent and the child, with the forfeiture clause in the event of the bankruptcy, etc., of the child. The covenant would thus be (within the meaning of the section) a covenant to pay to, or for the benefit of, the child during the whole of the child's life, subject only to the possibility that the parent might die, before the child either died, or became bankrupt, etc., and if that event happened the covenant would be a covenant to pay during the whole of the parent's lifetime.

There is, of course, the further point (to which your contributor refers) that sub-s. (11) of the second proviso to s. 20 might just as reasonably have been applied to a covenant for the life of the parent, as to a covenant for the life of the child.

9th June. A COUNTRY SOLICITOR.

Societies.

Middle Temple.

Friday, 10th June, being Empire Grand Day of Trinity Term at Gray's Inn, the Treasurer, Mr. Leslie de Gruyther, K.C., and the Masters of the Bench entertained at dinner the following guests: Lord Hardinge of Penshurst, Lord Macmillan, Major-General Sir Granville Ryrie (High Commissioner, Commonwealth of Australia), Mr. D. J. Davis (Acting High Commissioner, Newfoundland), Mr. J. W. Dulanty (High Commissioner, Irish Free State), Mr. J. W. Downie (High Commissioner, Southern Rhodesia) Sir J. D. Connolly (Agent-General, Malta), Sir Stanley Jackson, Sir Dinshah Mulla, Sir Harcourt Butler, General Sir Hubert Gough, Major-General Sir Percy Cox, Major-General Sir Edward Northey, Lieutenant-Colonel Sir John Chancellor, Sir Stephen Tallents, Colonel Sir George McLaren Brown, Rear-Admiral Arthur Bromley, R.N., Mr. William Graham, the Master of the Temple, and the Under-Treasurer.

The Masters of the Bench present in addition to the Treasurer were: Sir R. A. McCall, K.C., Judge Ruegg, K.C., Mr. Aspinall, K.C., Lord Craigmyle, Viscount Dunedin, Mr. Edward Shortt, K.C., Mr. Lowenthal, K.C., Judge Holman Gregory, K.C., Mr. Micklethwait, K.C., Sir Lynden Macassey, K.C., Mr. Hart, K.C., Viscount Finlay, Mr. Dunne, K.C., Judge Dumas, Mr. Bevan, K.C., Mr. Sullivan, K.C., Judge Sir Thomas Artemus Jones, K.C., Mr. Miller, K.C., Mr. Cassels, K.C., Mr. Tindal Atkinson, Mr. Frampton, Mr. Ian Macpherson, K.C., Mr. Bowen Davies, K.C., Mr. Paterson, Sir Henry Foster MacGeagh, K.C., and Mr. Justice du Parcq.

Law Association.

The usual monthly meeting of the Directors was held at The Law Society's Hall on Thursday, the 9th June, when Mr. G. D. Hugh-Jones was elected Chairman for the year. The other Directors present were Mr. J. D. Arthur, Mr. E. B. V. Christian, Mr. Guy H. Cholmeley, Mr. Douglas T. Garrett, Mr. H. Ross Giles, Mr. Percy E. Marshall, Mr. C. D. Medley, Mr. C. F. Pridham, Mr. Frank S. Pritchard, Mr. John Venning, Mr. Wm. Winterbotham, and Mr. W. M. Woodhouse, and the Secretary (Mr. E. Evelyn Barron). The circumstances of twenty-one applicants were considered and a total sum of £993 was voted in relief. Three new members were elected, and other general business transacted.

Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held in The Law Society's Court Room, Carey-street, London, on the 8th June, Mr. W. A. Coleman (Leamington) in the chair. The other Directors present were Sir A. Norman Hill, Bart., Sir E. F. Knapp-Fisher, Sir Reginald W. Poole, and Messrs. A. C. Borlase (Brighton), E. Bramley (Sheffield), E. R. Cook, C.B.E., T. G. Cowan, T. S. Curtis, A. G. Gibson, O. J. Humbert, Gerald Keith, C. W. Lee, H. A. H. Newington, E. C. Ouvry, F. L. Steward (Wolverhampton), and A. B. Urmston (Maidstone). £1,183 was distributed in grants of relief, three new members were admitted, and other general business was transacted.

Parliamentary News.

Progress of Bills.

House of Lords.

Carriage by Air Bill.
Read Third Time. [14th June.

Chesterfield and Bolsover Water Bill.
Reported, with Amendments. [14th June.

Children and Young Persons' Bill.
In Committee. [13th June.

Coal Mines Bill.
Reported, without Amendment. [14th June.

Commercial Gas Bill.
Reported, without Amendment. [14th June.

Dagenham Trading Estate Bill.
Commons Amendment agreed to. [9th June.

Finance Bill.
Read Second Time. [14th June.

Glasgow Corporation Order Confirmation Bill.
Read First Time. [9th June.

Kent Corn Rent Bill.
Read Third Time. [14th June.

Kettering Gas Bill.
Read Third Time. [13th June.

Lindsey County Council (Sandhills) Bill.
Reported, with Amendments. [13th June.

London and North Eastern Railway Order Confirmation Bill.
Read Second Time. [14th June.

London Midland and Scottish Railway Order Confirmation Bill.
Read Second Time. [14th June.

London United Tramways, Limited (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [15th June.

Mid Southern Utility Bill.
Read Second Time. [15th June.

Ministry of Health Provisional Order Confirmation (Hailsham Water) Bill.
In Committee. [14th June.

Ministry of Health Provisional Order Confirmation (Henley-on-Thames Water) Bill.
In Committee. [14th June.

Ministry of Health Provisional Order Confirmation (Hertford) Bill.
Read Third Time. [15th June.

Ministry of Health Provisional Orders Confirmation (Elham Valley Water and Herts and Essex Water) Bill.
In Committee. [14th June.

Oakham Gas and Electricity Bill.
Reported, with Amendments. [9th June.

Sea Fisheries Provisional Orders (No. 2) Bill.
Read Second Time. [14th June.

Solicitors Bill.
In Committee. [14th June.

South Lancashire Transport Company (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [14th June.

South Suburban Gas Bill.
Reported, with Amendments. [14th June.

Wokingham District Water Bill.
Read First Time. [14th June.

House of Commons.

Bills of Exchange Act (1882) Amendment Bill.
Read Second Time. [13th June.

Finance Bill.
Read Third Time. [10th June.

London County Council (Money) Bill.
Read Third Time. [15th June.

Ministry of Health Provisional Order Confirmation (Hertford) Bill.
Read First Time. [15th June.

National Health Insurance and Contributory Pensions Bill.
In Committee. [14th June.

North Metropolitan Electric Power Supply Bill.
Reported, with Amendments. [9th June.

Port of London (Various Powers) Bill.
Read Third Time. [15th June.

Sidmouth Water Bill.
Reported, with Amendments. [9th June.

Wokingham District Water Bill.
Read Third Time. [14th June.

Legal Notes and News.

Birthday Legal Honours.

The following were omitted from the list which appeared in last week's issue of those upon whom the King conferred honours on the occasion of his sixty-seventh birthday:—

KNIGHT.

WILLIAM FRANCIS FLADGATE, Esq., M.V.O., J.P., who was admitted a solicitor in 1876. He is a member of the firm of Messrs. Fladgate & Co., solicitors, Pall Mall, and Chairman of the London Power Company, Limited, and of the Chariug Cross Electricity Supply Company, Limited.

ORDER OF THE BATH.

C.B. (Civil Division).

Lieutenant-Colonel (Honorary Colonel) DAVID MAIN, V.D., Chairman, Territorial Army Association of the County of Cumberland. Colonel Main, who was admitted a solicitor in 1884, is a member of the firm of Messrs. Blackburn & Main, solicitors, of Carlisle, Haltwhistle and Alston. He is a member of The Law Society, and has held the office of Clerk to the Justices for the Alston Division of Cumberland for many years.

Honours and Appointments.

The King has approved the appointment of Mr. T. HOLLIS WALKER, K.C., to be a Commissioner of Assize to go the Oxford and Midland Circuits (Stafford and Birmingham), and of Sir LANCELOT SANDERSON to be a Commissioner of Assize to go the North-Eastern Circuit, in the place of Mr. Justice Swift and Mr. Justice Macnaghten, who will remain in London to take the New Procedure List.

The King has approved a recommendation of the Home Secretary that Mr. GEOFFREY HUGH BENBOW STREATFEILD be appointed Recorder of Rotherham, to succeed Mr. RICHARD STORRY DEANS, who has been appointed Recorder of Newcastle-on-Tyne.

Dr. W. H. WHITEHOUSE, the Coroner for South-East London was unanimously elected President of the Coroners' Society of England and Wales at the annual meeting of the society. Mr. A. L. FORRESTER, Coroner for North and South Wiltshire, was elected Vice-President. Sir ARCHIBALD BODKIN was elected Honorary Counsel and Mr. RUTLEY MOWLL Honorary Solicitor.

Mr. F. Danford Thomas, the Coroner for the City of London, has appointed Dr. P. BERNARD SKEELS to be Deputy Coroner.

Mr. P. R. E. SMITH, solicitor of Wellingborough, has been appointed to the local board of directors of the Nottingham Branch of the Guardian Assurance Co. Limited.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

PROCEDURE OF LOTTERIES COMMISSION.

SITTINGS TO BE HELD IN PUBLIC.

The Royal Commission on Lotteries and Betting held a preliminary meeting on Thursday, the 9th June, to discuss questions of procedure.

It was decided that, unless in any case the Commission otherwise directs, meetings of the Commission for hearing evidence will be held in public. The first meetings for hearing evidence will take place on Thursday, 30th June, and Friday, 1st July. A further notice will be issued giving the place and time of these meetings. The first meetings of the Commission will be devoted to ascertaining the existing law and practice. Evidence of a more general character will not be taken until later.

Any association, society or person wishing to submit evidence to the Commission should apply to the Secretary of the Commission (Treasury Chambers, Whitehall, S.W.1), who will inform them of the procedure to be followed.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
			Witness. Part I.	Non-Witness.
M'nd'y June 20	Mr. More	Mr. Jones	Mr.*Ritchie	Mr. Andrews
Tuesday .. 21	Hicks Beach	Ritchie	*Andrews	More
Wednesday 22	Andrews	Blaker	*More	Ritchie
Thursday . 23	Jones	More	*Ritchie	Andrews
Friday 24	Ritchie	Hicks Beach	Andrews	More
Saturday .. 25	Blaker	Andrews	More	Ritchie

DATE.	GROUP I. MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	GROUP II. MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
	Witness Part II.	Non-Witness.	Witness. Part II.	Witness Part I.
M'nd'y June 20	Mr.*More	Mr. Blaker	Mr. Jones	Mr.*Hicks Beach
Tuesday .. 21	Ritchie	Jones	*Hicks Beach	*Blaker
Wednesday 22	*Andrews	Hicks Beach	Blaker	*Jones
Thursday . 23	More	Blaker	*Jones	Hicks Beach
Friday 24	*Ritchie	Jones	Hicks Beach	*Blaker
Saturday .. 25	Andrews	Hicks Beach	Blaker	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (12th May, 1932) 2½%. Next London Stock Exchange Settlement Thursday, 23rd June, 1932.

	Middle Price 15 June 1932.	Flat Interest Yield.			Approximate Yield with redemption		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	99¾	4	0	2	—		
Consols 2½%	63½xd	3	18	8	—		
War Loan 5% 1929-47	102¼	4	17	9	—		
War Loan 4½% 1925-45	102	4	8	3	4	5	10
Funding 4% Loan 1960-90	101½	3	18	9	3	18	5
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	101¾	3	18	7	3	18	2
Conversion 5% Loan 1944-64	110	4	10	11	4	8	3
Conversion 4½% Loan 1940-44	104½	4	6	2	4	0	4
Conversion 3½% Loan 1961	88½	3	19	1	—		
Local Loans 3% Stock 1912 or after	74½xd	4	0	6	—		
Bank Stock	281	4	5	0	—		
India 4½% 1950-55	91	4	18	11	—		
India 3½%	67xd	5	4	5	—		
India 3%	58xd	5	3	5	—		
Sudan 4½% 1939-73	102	4	8	3	4	7	10
Sudan 4% 1974	98	4	1	8	4	2	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government.)	93	3	4	6	3	9	8
Colonial Securities.							
Canada 3% 1938	92½xd	3	4	10	4	9	0
Cape of Good Hope 4% 1916-36	98	4	1	8	4	10	1
Cape of Good Hope 3½% 1929-49	85xd	4	2	4	4	16	6
Ceylon 5% 1960-70	107	4	13	5	4	12	2
Commonwealth of Australia 5% 1945-75	91xd	5	9	11	5	11	0
Gold Coast 4½% 1956	100xd	5	0	0	5	0	0
Jamaica 4½% 1941-71	101	4	9	1	4	8	11
Natal 4% 1937	98	4	1	8	4	9	1
New South Wales 4½% 1935-45	77xd	5	16	10	7	6	1
New South Wales 5% 1945-65	85	5	17	8	6	1	3
New Zealand 4½% 1945	90	5	0	0	5	12	4
New Zealand 5% 1946	97xd	5	3	1	5	6	4
Nigeria 5% 1950-60	107	4	13	5	4	10	11
Queensland 5% 1940-60	86	5	16	3	6	1	3
South Africa 5% 1945-75	101¼xd	4	18	6	4	18	4
South Australia 5% 1945-75	89xd	5	12	4	5	13	9
Tasmania 5% 1945-75	91	5	9	11	5	11	0
Victoria 5% 1945-75	86xd	5	16	3	5	18	0
West Australia 5% 1945-75	91	5	9	11	5	11	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	71xd	4	4	6	—		
Birmingham 5% 1946-56	107	4	13	5	4	10	2
Cardiff 5% 1945-65	104	4	16	2	4	15	1
Croydon 3% 1940-60	80	3	15	0	4	5	0
Hastings 5% 1947-67	106	4	14	4	4	13	0
Hull 3½% 1925-55	84	4	3	4	4	13	0
Liverpool 3½% Redeemable by agreement with holders or by purchase	84xd	4	3	4	—		
London County 2½% Consolidated Stock after 1920 at option of Corporation	62	4	0	8	—		
London County 3% Consolidated Stock after 1920 at option of Corporation	74	4	1	1	—		
Metropolitan Water Board 3% "A" 1963-2003	73½	4	1	8	—		
Do. do. 3% "B" 1934-2003	76	3	19	0	—		
Middlesex C.C. 3½% 1927-47	92	3	16	1	4	4	8
Newcastle 3½% Irredeemable	79½	4	8	1	—		
Nottingham 3% Irredeemable	71	4	4	6	—		
Stockton 5% 1946-66	104	4	16	2	4	15	3
Wolverhampton 5% 1946-56	105	4	15	3	4	12	10
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	87½	4	11	6	—		
Gt. Western Rly. 5% Rent Charge	101½	4	18	6	—		
Gt. Western Rly. 5% Preference	50	10	0	0	—		
L. Mid. & Scot. Rly. 4% Debenture	78½	5	2	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	63½	6	6	0	—		
L. Mid. & Scot. Rly. 4% Preference	29½	13	11	3	—		
Southern Rly. 4% Debenture	82½	4	17	0	—		
Southern Rly. 5% Guaranteed	90½	5	10	6	—		
Southern Rly. 5% Preference	38½	12	19	10	—		
*L. & N.E. Rly. 4% Debenture	73½	5	8	9	—		
*L. & N.E. Rly. 4% 1st Guaranteed	49	8	3	3	—		
*L. & N.E. Rly. 4% 1st Preference	21	19	1	0	—		

*The Prior Charge Stocks of the L. & N.E. Rly. are no longer available for Trustees under the heading of either Strict Trustee or Chancery Stocks as no dividend has been paid on that Company's Ordinary Stocks for the past year.